



Regelrådet



**Contribution to the Stakeholder Consultation on
Smart Regulation**

Adviescollege Toetsing Administratieve Lasten, The Netherlands

Nationaler Normenkontrollrat, Germany

Regelrådet, Sweden

Regulatory Policy Committee, United Kingdom

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General Remarks

The *Adviescollege Toetsing Administratieve Lasten (ACTAL)*, the *Nationaler Normenkontrollrat (NKR)*, the *Swedish Better Regulation Council (Regelrådet)* and the *Regulatory Policy Committee (RPC)*¹ are independent bodies to advise respectively the Dutch, German, Swedish and British governments on better regulation in general and/or administrative burden reduction in particular. In this capacity we have developed comprehensive expertise in better regulation and reducing the administrative burden for businesses imposed by legislation. We play an important role in challenging, monitoring and advising our governments on these issues. We follow the European agenda on better and smart regulation especially by contributing to the work of the High Level Group of Independent Stakeholders on Administrative Burdens (HLG) as regular members or observers.

We welcome that the new Commission continues and expands the better regulation agenda of the previous Commission by launching a “Programme on Smart Regulation”. It shows that the Commission considers that effective legislation that does not unnecessarily burden the economy is a continuing and important duty. Nevertheless, we are convinced that the Commission’s approach on smart regulation as outlined in the President’s Political guidelines for the next Commission and the consultation document could be more ambitious to enable a smart regulation mindset within the Commission and to maximise the benefits of smart regulation for businesses, the public sector, consumers and other stakeholders.

Improving existing legislation

1. Simplification programme

Over the years the *acquis communautaire* has become a complex, excessive and inaccessible body of legislation. By streamlining the regulatory framework and simplifying procedures the Commission’s Simplification programme has added value to make European legislation more transparent, easier to understand and better to follow. The 148 proposals adopted so far form a good start but more should be done.

2. Administrative burden reduction programme

The administrative burden reduction programme is important to strengthen the European economy. The current economic crisis reinforces the need to strengthen the competitiveness of the EU by relieving businesses of unnecessary regulatory burden. To make the administrative burden reduction programme more effective and felt by businesses, the following aspects should be considered:

- The Commission has presented several initiatives to reduce administrative burdens. For example, the proposals on e-invoicing and on the option to exempt micro enterprises from the company law directives were important steps to relieve business substantially. Nevertheless, further legislative initiatives are necessary. The reduction proposals initiated and/or approved by the HLG should, to a greater extent, be considered and adopted by the Commission. It is not acceptable that proposals such as the one to extend the radius from 50 kilometres to 150 kilometres for operations of craftsmen without the obligation of registering driving hours, in the case of transport-

¹ The UK Regulatory Policy Committee comments on the quality of analysis, including all costs and all benefits, presented to support new regulatory proposals.

ing tools and materials used in their own work, will be taken forward in 2011 only. This is after the Commissioner in charge in 2009 had already agreed to put the proposal forward. Both the process for moving ahead with this proposal, and the speed at which it is being taken forward, is unsatisfactory.

Furthermore, to reach a perceivable burden reduction for individual businesses, the Commission should not only propose initiatives with a large macroeconomic burden reduction, but also come forth with proposals that can bring about a substantial relief for specific groups of businesses or are perceived as irritating. Therefore, it is necessary to involve stakeholders more regularly and more systematically in the drafting of regulatory proposals. This will ensure that reduction measures are real and make a difference for businesses.

- Measuring only parts of the existing stock of legislation does not provide insight into the total amount of administrative burdens stemming from European legislation. Analysing the information obligations stemming from all the existing EU legislation makes it possible to find significant areas for the reduction of administrative burdens now and in the future. Therefore, the current partial measurement should be enlarged to a full scale measurement of all the administrative burdens for businesses.
- In order for the action programme to retain credibility, businesses must experience a net reduction in administrative burdens. The impact of simplification has to be measured against the flow of new regulation; including the regulation adopted in the comitology procedure. To prevent reductions being negated by new legislation with new administrative burdens, it is of great importance to set a net reduction target. Furthermore, to assure that a wide range of sectors and businesses profit from the burden reduction, appropriate targets should be set for each DG.

3. Ex-post evaluation

We agree that ex-post evaluation is a good tool to ensure that existing policies produce their intended results. Such evaluations should make it possible to look at an entire policy sector to identify overlaps, gaps, inconsistencies, obsolete measures and excessive regulatory burdens.

Nevertheless, it has to be taken into account that ex-post evaluations as they are currently carried out are time-consuming and expensive and in the current form should only be required where there is a clear indication from stakeholders that the policy is out-dated. However, we believe that the Commission should consider a more proportionate system of post-implementation reviews for *all* regulatory policies. A post-implementation review need only be, in effect, an updated version of an impact assessment, and it should be proportionate to the likely benefits resulting from the review.

4. Compliance Costs

In the last few years the better regulation debate has focused more and more on the reduction of compliance costs, as well as administrative burdens. The Netherlands has started a programme to reduce compliance costs and Germany is currently launching a programme to reduce compliance costs. In May 2010 an international workshop hosted by the German government took place where representatives of several Member States were present showing strong interest in finding a common methodology to reduce compliance costs. In the UK, the Regulatory Policy Committee monitors all costs, including compliance costs. Compliance costs should be tackled as they are at least as burdensome as administrative burdens, if not frequently more so. Furthermore, businesses do not differentiate between administrative burdens and compliance costs.

Making the most of new initiatives

There is no doubt that since 2005, Commission's impact assessments have improved significantly. By analysing benefits and costs and addressing all significant economic, social and environmental impacts, the integrated approach is a good policy tool in the decision making process. Nevertheless, there is still room for improvement concerning the scope and the quality of impact assessments.

1. Scope of Impact Assessments

Today, impact assessments and ex-ante measurement of administrative burdens have to be carried out in a limited number of cases only. Although with the new impact assessment guidelines the number of impact assessments and ex-ante measurements of administrative burdens have increased, there are still Commission initiatives that are not accompanied by an impact assessment. Impact assessments and ex-ante measurement of administrative burdens in particular are of utmost importance to embed a better regulation mindset. We therefore recommend that impact assessments and ex-ante measurements of administrative burdens are carried out for every new legislative proposal by the Commission and at every stage of the policy-making cycle. Needless to say, impact assessments for proposals with minor impacts can be shorter and less exhaustive than impact assessments for proposals that provide for a fundamental policy change.

2. Quality of Impact Assessments

The integrated approach as exposed in the impact assessment guidelines ensures that all benefits and costs are described and analysed. If applied properly, Commission's impact assessments would be a valuable tool in the decision making process. Unfortunately, over the last years and fairly recently we have encountered several impact assessments that do not apply the integrated approach properly because assessments of single impacts were missing or of very weak quality. This relates for example to the administrative burden assessments which – if at all – often only present the total amount of burdens introduced. This is even worse when parts of the Commission impact assessments are carried out by external consultants. In these cases it appears that the assessment of the impacts had limited relevance on the drafting of the text.

As the added value of impact assessments depends on their quality, the Commission should ensure that the quality of impact assessments is improved. This can be done by better training and further support for policy officials. Furthermore, quality control mechanisms should be enhanced. We welcome the impact that the Impact Assessment Board has had on quality control so far and we hope that the introduction of tougher consequences where it rejects an impact assessment will deliver further improvements.

However, quality control can also be delivered by more systematic and timely stakeholder consultations. It is regrettable that in the Commission's impact assessment system, stakeholder consultation is carried out only at a very early stage. If the draft proposal together with the accompanying impact assessment were to be presented to stakeholders through an open, consultation process, which should last longer than eight weeks, there would be a quality check of the impact assessments by those who have the best knowledge on the policy area, i.e. the stakeholders concerned.

In addition, transparency as a key strength of the Commission's approach to impact assessment could be further enhanced. In line with publishing draft impact assessments at an earlier stage of the process for consultation, it would also be of great use to many Stakeholders if the opinions of the Impact Assessment Board (IAB) were also made public in an

earlier stage of the process. This is unlike the current system whereby the opinions are only published once the Commission has adopted the related policy proposal.

The quality check of the IAB could be improved and given more credibility by a stronger use of external experts. Although the IAB has the right to consult external experts, it has not done so in the last year. This would have improved the quality check on the impact assessment. The HLG is a Commission advisory group that has expertise in administrative burden reduction. It should be regularly consulted by the IAB on proposals where administrative burdens are significant so that the best solution possible can be found. One possibility is to create a sub committee to advise the IAB on this issue specifically. Updates can then be given during the HLG meetings.

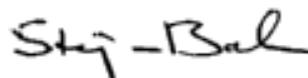
Furthermore, we are of the opinion that the quality of impact assessments and ex-ante measurements of administrative burdens improves when they are scrutinized independently and externally. This is noted by the OECD and backed by many countries both in the EU and outside the EU, which have adopted this approach. Independent and external scrutiny adds credibility and will help ensure that businesses and stakeholders are engaged and remain supportive to the programme. Therefore, we would recommend that the Commission considers how best to incorporate the principle of independent and external scrutiny into its policy-making process.

Conclusions

It is appreciated that the Commission is going to launch a “Smart Regulation Programme”. The outlines of the programme entail several good ideas to make the programme more delivering than the better regulation agenda of the previous Commission. Nevertheless, as mentioned above there are several aspects which should be improved. We are ready to assist the Commission in further developing the “Smart Regulation Programme”.



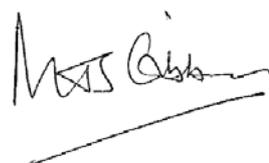
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